



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE

13901 Crown Court, Woodbridge, Virginia 22193

(703) 583-3800 Fax (703) 583-3821

www.deq.virginia.gov

Douglas W. Domenech,
Secretary of Natural Resources

David K. Paylor
Director

Thomas A. Faha
Regional Director

April 6, 2010

CERTIFIED MAIL
Return Receipt Requested

Mr. Charles Oliver
Plant Manager
Mirant Potomac River Generating Station
1400 North Royal Street
Alexandria, Virginia 22314

NOTICE OF VIOLATION

RE: Mirant Potomac River Generating Station, Registration No. 70228

Dear Mr. Oliver:

This letter notifies you of information upon which the Department of Environmental Quality ("Department" or "DEQ") may rely in order to institute an administrative or judicial enforcement action. Based on this information, DEQ has reason to believe that the Mirant Potomac River Generating Station may be in violation of the Air Pollution Control Law and Regulations.

This letter addresses conditions at the facility named above, and also cites compliance requirements of the Air Pollution Control Law and Regulations. Pursuant to Va. Code § 10.1-1309(A)(vi), this letter is not a case decision under the Virginia Administrative Process Act, Va. Code § 2.2-4000 *et seq.* The Department requests that you respond **within 10 Business days of the date of this letter.**

OBSERVATIONS AND LEGAL REQUIREMENTS

Mirant Potomac River, LLC, (Mirant) was issued a Stationary Source Permit to Operate an electric generating facility on July 31, 2008 (Permit).

On February 1, 2010, the Northern Regional Office (NRO) of the Virginia Department of Environmental Quality (DEQ), received the following documents from Mirant Potomac River Generating Station (PRGS): the Semi-Annual Air Quality Compliance Report (July 1, 2009 through December 31, 2009), the Fourth Quarter 2009 Excess Emissions Report (EER), and the Fourth Quarter Continuous Emissions Monitoring System (CEMS) Downtime Report.

On February 22, 2010, DEQ staff sent electronic correspondence to Mirant requesting 3-hour data for the particulate matter (PM) CEMS for Merged Stack 1 (MS-1) and Merged Stack 4 (MS-4) located at the facility. On March 1, 2010, DEQ-NRO received telephone communication from Mirant requesting a meeting to discuss the data requested. On March 9, 2010, DEQ-NRO received electronic correspondence from the facility with the 3-hour PM CEMS data.

On March 11, 2010, a meeting was held between DEQ staff and facility representatives to discuss the data submitted by the facility. The following describes DEQ staff observations and identifies applicable legal requirements.

Observation: A review of the Fourth Quarter, CY 2009 EERs appears to indicate that required PM CEMS data for Merged Stack 1 (MS-1) and Merged Stack 4 (MS-4), were not included in the reports. The PM CEMS for MS-1 and MS-4 were certified on July 22, 2009.

Legal Requirements:

In accordance with 9 VAC 5-40-40 and 9 VAC 5-80-850, Condition 19 of the Permit* states,

"Monitoring - CEMS- Particulate Matter (PM) - Within 12 months of the issuance of this permit, the permittee shall install, certify, and operate PM CEMS to meet the design specifications of 40 CFR Part 60, Appendix B, to measure and record PM. The PM CEMS shall be operated in accordance with the requirements of the appropriate specifications of 40 CFR 60.13 and 40 CFR Part 60, Appendices B and/or F or DEQ-approved procedures which are equivalent to the requirements of 40 CFR 60.13 and 40 CFR Part 60, Appendices B and/or F or 40 CFR Part 75, Subpart C, Appendices A and B."

In accordance with 9 VAC 5-40-50, Condition 41 of the Permit* states,

"Quarterly Reports for Continuous Monitoring Systems - The permittee shall furnish written reports to the Regional Air Compliance Manager of the DEQ's NRO at the address in Condition 18 of excess emissions from any process monitored by a continuous monitoring system (COMS/CEMS) on a quarterly basis, postmarked no later than the 30th day following the end of each calendar quarter. These reports shall include, but are not limited to the following information:

- a. *The magnitude of excess emissions, any conversion factors used in the calculation of excess emissions, and the date and time of commencement and completion of each period of excess emissions;*
- b. *Specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the process, the nature and cause of the malfunction (if known), the corrective action taken or preventative measures adopted;*
- c. *The date and time identifying each period during which the continuous monitoring system was inoperative except for zero and span checks and the nature of the system repairs or adjustments; and*
- d. *When no excess emissions have occurred or the continuous monitoring systems have not been inoperative, repaired or adjusted, such information shall be stated in that report."*

Observation: On March 9, 2010, the facility submitted PM-CEMS data for the time period of July 22, 2009 through December 31, 2009, for MS-1 and MS-4. The data provided by the source indicates that the filterable and condensable particulate matter emissions were above 0.045 lb/MMBtu for MS1 and for MS4. Based on the CEM data, the data contained in the stack test documents as it relates to total particulate emissions, and EPA's Credible Evidence Rule, DEQ feels that there is sufficient information to indicate that there may have been excursions from the permitted PM emission limit in the permit.

Legal Requirements:

In accordance with 9 VAC 5-80-850, Condition 28 of the Permit states,*

Process Emission Limits - Emissions from MS1 and MS4 shall not exceed the limits specified below:

<i>Pollutant</i>	<i>Emission rate</i>	
	<i>Merged Stack 1 (MS1)</i>	<i>Merged Stack 4 (MS4)</i>
<i>Particulate Matter (PM) including condensables (3-hour average)</i>	<i>0.045 lb/MMBtu 93.69 lbs/hr</i>	<i>0.045 lb/MMBtu 146.12 lbs/hr</i>

Observation: On March 11, 2010, a meeting was held between DEQ staff and Mirant representatives. During the meeting, facility personnel reported that subsequent to the certification of the PM CEMS units on July 22, 2009, real-time displays of the PM-CEMS units were not initially available to plant operators in the main control room. Facility personnel also reported that standard operating procedures had not been developed to

address situations where the PM CEMS units indicate exceedances of the facility's short-term PM emissions limits.

Legal Requirements:

9 VAC 5-40-20(E.) states,

“At all times, including periods of startup, shutdown, soot blowing and malfunction, owners shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the board, which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.”

****9 VAC 5-170-160 (A) – (Conditions on Approvals) of the Commonwealth of Virginia State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution states in part:***

“The board may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law, and which are consistent with the regulations of the board. Except as otherwise specified, nothing in this chapter shall be understood to limit the power of the board in this regard. If the owner or other person fails to adhere to the conditions, the board may automatically cancel the permit or approvals. This section shall apply, but not be limited, to approval of variances, approval of control programs, and granting of permits.”

****Va. Code § 10.1322 (A) gives the Department the authority to issue, amend, revoke or terminate and reissue permits, and failure to comply with any condition of a permit is considered a violation of the Air Pollution Control Law.***

ENFORCEMENT AUTHORITY

Va. Code § 10.1-1316 of the Air Pollution Control Law provides for an injunction for any violation of the Air Pollution Control Law, the Air Board regulations, an order, or permit condition, and provides for a civil penalty up to \$32,500 per day of each violation of the Air Pollution Control Law, regulation, order, or permit condition. In addition, Va. Code §§ 10.1-1307 and 10.1-1309 authorizes the Air Pollution Control Board to issue orders to any person to comply with the Air Pollution Control Law and regulations, including the imposition of a civil penalty for violations of up to \$100,000. Also, Va. Code § 10.1-1186 authorizes the Director of DEQ to issue special orders to any person to comply with the Air Pollution Control Law and

regulations, and to impose a civil penalty of not more than \$10,000. Va. Code §§ 10.1-1320 and 10.1-1309.1 provide for other additional penalties.

The Court has the inherent authority to enforce its injunction, and is authorized to award the Commonwealth its attorneys' fees and costs.

FUTURE ACTIONS

DEQ staff wishes to discuss all aspects of their observations with you, including any actions needed to ensure compliance with state law and regulations, any relevant or related measures you plan to take or have taken, and a schedule, as needed, for further activities. In addition, please advise us if you dispute any of the observations recited herein or if there is other information of which DEQ should be aware. In order to avoid adversarial enforcement proceedings, Mirant Potomac River Generating Station may be asked to enter into a Consent Order with the Department to formalize a plan and schedule of corrective action and to settle any outstanding issues regarding this matter, including the assessment of civil charges.

In the event that discussions with staff do not lead to a satisfactory conclusion concerning the contents of this letter, you may elect to participate in DEQ's Process for Early Dispute Resolution. If you complete the Process for Early Dispute Resolution and are not satisfied with the resolution, you may request in writing that DEQ take all necessary steps to issue a case decision where appropriate. For further information on the Process for Early Dispute Resolution, please visit the Department's website under "Laws & Regulations" and "DEQ regulations" at: http://www.deq.virginia.gov/regulations/pdf/Process_for_Early_Dispute_Resolution_8260532.pdf or ask the DEQ contact listed below.

Please contact Ms. Sarah Baker, Regional Enforcement Manager, at (703)583-3850 or by e-mail at Sarah.Baker@deq.virginia.gov **within 10 Business days of the date of this letter** to discuss this matter and arrange a meeting.

Sincerely,



R. David Hartshorn
Regional Air Compliance Manager